State v. *Crites,* 48 Ohio 460; *Shotwell* v. *Covington,* 69 Miss. 735. In the last case cited the court said: "Holding as we must that it is settled that the power is * * * judicial (as distinguished from ministerial), we are unable to perceive upon what principle we can decide that an arbitrary, or even corrupt, abuse of the power can be corrected by mandamus." Dicta tending to show that the court will interfere if the abuse is palpable are found in *People* v. *Van Cleave,* 183 Ill. 330; *People* v. *Williams,* 185 N. Y. 92, and in *People* v. *Department of Health,* 82 N. E. Rep. 187 (N. Y.). In the first case supra the court declared the act ministerial, the second involved certiorari, and in the third peremptory mandamus was refused because the act was discretionary, though the court intimated that an alternative writ would have lain. In *Sanson* v. *Mercer,* 68 Texas 488, the act was declared ministerial. *Board of Dental Examiners* v. *People,* 123 Ill. 227, is, however, on all fours with the principal case, following the dicta of *People* v. *Van Cleave,* supra. While the case may therefore mark a tendency to supervise the discretion of administrative officers, it is at present doubtful authority, a conclusion strengthened by the fact that three judges dissent.

MARRIAGE—VALIDITY—DISAPPEARANCE OF FIRST HUSBAND.—Contestant's husband had disappeared, and after the statutory period of five years had elapsed, she married decedent. The statute provided that after a period of five years, the survivor might marry again and the marriage would not necessarily be void. In a proceeding to probate decedent's will which was made prior to his marriage with contestant, *held,* that where a husband disappeared and was absent for five years, and his wife had reason to believe that he was dead, her second marriage in good faith was valid as to all the world, unless the first husband reappears and institutes an action to annul the same. *In re Del Genovese's Will* (1907), 107 N. Y. Supp. 1033.

The decision in the principal case follows the New York decisions as found in *Cropsey* v. *McKinney,* 30 Barb. 47; *White* v. *Lowe,* 1 Redf. Sur. 376; *Jones* v. *Zoller,* 29 Hun 551; *Gall* v. *Gall,* 114 N. Y. 109, 21 N. E. 106. In these cases the court held that marriages of this nature are valid until nullified by the decree of a competent tribunal. However, *Spicer* v. *Spicer,* 16 Abb. Prac. (N. S.) 112, held that a woman whose husband absents himself for the space of five years, without being known to her to be living during that time is incapable of contracting marriage, notwithstanding the statute. The principal case decided that *Spicer* v. *Spicer,* supra, was contrary to the meaning of the statute. Similar holdings to those of the New York courts are found in *Estate of Harrington,* 140 Cal. 244, 73 Pac. 1000, 98 Am. St. Rep. 51; *Charles* v. *Charles,* 41 Minn. 201. A few courts seem to have gone even further and have pronounced the marriage valid, nothing being said about the right of the first husband or wife to annul the subsequent marriage. See *Strode* v. *Strode,* 66 (3 Bush) Ky. 227, 96 Am. Dec. 211; *Inhabitants of Hiram* v. *Pierce,* 45 Me. 367, 71 Am. Dec. 555; *Woods* v. *Woods' Adm'rs,* 2 Bay (S. C.) 476. The old common law rule that marriages of this nature are void is still applied in some of the states. This common law rule is well expressed in the opinion in *Martin's Heirs* v. *Martin,* 22 Ala. 86, in these

words "Though a man marries never so often, he can have but one lawful wife living. So long as she is living, and the marriage bond remains in full force, all his subsequent marriages whether meretricious or founded in mistake and at the time supposed to be lawful are utterly null and void." Some states which have statutes similar to those of New York have held marriages of this nature void. See *Glass* v. *Glass,* 114 Mass. 563; *Pain* v. *Pain,* 37 Mo. App. 110; *Webster* v. *Webster,* 58 N. H. 3; *Thomas* v. *Thomas,* 124 Pa. St. 646, 23 Wkly. Notes Cas. 410, 17 Atl. 182; *In re Clark's Estate,* 173 Pa. St. 451, 34 Atl. 68. The cases of *Webster* v. *Webster* and *Thomas* v. *Thomas,* supra, hold that although the marriage is void, the person marrying is exempt from criminal liability.

MUNICIPAL CORPORATIONS—LIABILITY IN TORT FOR THE NEGLIGENCE OF EMPLOYEES.—The plaintiff, while employed in repairing the roof of a police station, the property of the defendant city, was injured by falling into the elevator well. The negligence of a city employee was the cause of the accident. *Held,* that the city was exercising a governmental function in maintaining a police station, and was not liable. HAIGHT, J., dissenting. *Wilcox* v. *City of Rochester* (1907), — N. Y. —, 82 N. E. Rep. 1119.

The liability of the municipal corporation for tort depends upon the nature of the power or duty being exercised. If the function be governmental, the municipality is not liable, if quasi private or corporate, the liability attaches. The distinction is made between the political, administrative, governmental activities, and those powers granted for private corporate gain and advantage. *Maximillian* v. *The Mayor,* 62 N. Y. 160; *Lefrois* v. *County of Munroe,* 162 N. Y. 563; *Robinson* v. *Evansville,* 87 Ind. 334; *Ogg* v. *Lansing,* 35 Ia. 496; *Bryant* v. *St. Paul,* 33 Minn. 289; *Hill* v. *Boston,* 122 Mass. 344; *Murtaugh* v. *St. Louis,* 44 Mo. 479; *Eastman* v. *Meredith,* 36 N. H. 284. The courts differ, however, as to what functions are public or private. But it may safely be said that the establishment and operation of a jail is governmental. *Gray* v. *Griffin,* 111 Ga. 361; *Blake* v. *Pontiac,* 49 Ill. App. 543; *City of New Kiowa* v. *Craven,* 46 Kan. 114; *Gullickson* v. *McDonald,* 62 Minn. 278; *Carty* v. *Winooski,* 78 Vt. 104; *Brown's Adm'r.* v *Guyandotte,* 34 W. Va. 299. The same has been held as to police stations, *Kelly* v. *Cook,* 21 R. I. 29, and the city is not liable for the assaults or the negligence of its police officers. *McElroy* v. *Albany,* 65 Ga. 387; *Moffitt* v. *Asheville,* 103 N. C. 237. The dissenting opinion of HAIGHT, J., rests upon the view that the character of the service in which the servant is engaged controls and that in this case the employee was not performing a governmental function. The general rule is that the corporation is liable for the wrongful act, not ultra vires, done by its officer under direct authority, or subsequently ratified. It is liable for any act done by its officer, agent, servant, or employee in the execution of purely corporate powers or in the performance of ministerial corporate duties. *Orlando* v. *Pragg,* 31 Fla. 111; *Wright* v. *Augusta,* 78 Ga. 241; *Baltimore* v. *Eschbach,* 18 Md. 276; *Barree* v *Cape Girardeau,* 197 Mo. 382; *Missano* v. *New York,* 160 N. Y. 123; *Love* v. *Raleigh,* 116 N. C. 296; *Fischer* v. *New Bern,* 140 N. C. 506; *Hollman* v. *Platteville,* 101 Wis. 94. But it is not liable